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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 26th day of May, 1998

BEFORE

THE HON'BLE MR. JUSTICE V. P. MOHAN KUMAR

WRIT PETITION NO. 26206 OF 1995

BETWEEN :

The Executive Engineer,  
Karnataka Urban Water Supply  
& Drainage Board,  
Division No. 3,  
Bagalkot (Division has since  
become defunct, the same is  
attached to Bijapur Division,  
Bijapur)

.. PETITIONER

(Mr. Sanjay for  
Sri N.S. Srinivasan, Advocate  
for petitioner)

A N D :

1. Presiding Officer,  
Additional Labour Court,  
Hubli
2. Sri V.M. Desai, Major,  
R/o. Bewoor,  
Taluk : Bagalkot,  
Dist : Bijapur

.. RESPONDENTS

(Sri T.S. Amar Kumar for R - 2  
(M/s Lawyer's Inc)

Sri T.P. Nambiar, A.G.A. for R - 1)

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Writ Petition filed under Articles 226 & 227 of the Constitution of India, praying to; Issue a writ of certiorari or any other writ or direction as the case may be quashing the orders passed by the Labour Court, Hubli, in No. KID.292/93 (Old No : KID 403/88) dt. 29.11.1994 Annexure - 'F' and to hold that the Labour Court has no jurisdiction to entertain the application filed by the respondent under the I. D. Act; To declare that the respondent is not a workmen nor the petitioner is an Employer within the meaning of the Industrial Disputes Act, 1947 and to hold that the claimant is not entitled to any reliefs under the Industrial Disputes Act, etc.

This Writ Petition coming on for Hearing, this day, the Court made the following :

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The petitioner challenges the award passed by the Tribunal with respect to an industrial dispute raised by the 2nd respondent. The 2nd respondent was appointed as a Watchman on 30-6-1976. While working as such, on 5-10-1977, a notice was served on him terminating his services with effect from 31-10-1977.

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31-10-1977. He was accordingly discharged from services. After lapse of nearly 10 years, he filed an application under Section 10(4-A) of the I.D. Act challenging his termination. The petitioner was served notice through his counter-part the Executive Engineer, Karnataka Urban Water Supply and Drainage Board, Division No. 3, Bagalkot. It appears, that division has ceased to exist and attached to Bijapur. There was no notice to Bijapur Division. After hearing the respective sides, the Labour Court passed the impugned order setting aside the order of dismissal and calling upon the petitioner to reinstate the worker with full backwages from the date of application till the date of award. It is this award that is challenged in these proceedings.

2. I have heard Mr. Sanjay Gowda, learned counsel for thepetitionery as also Mr. Amar Kumar, learned counsel appearing for the worker. I am not convinced with the argument of the learned counsel for the

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for the petitioner that the award requires reconsideration. The learned counsel submits that there was no effective opportunity for them to contest the case as the notice was not served on the petitioner, therefore, they could not effectively defend the case. It is brought out from the argument of the learned counsel that all the facts in question have been admitted. The appointment of the worker was admitted. The termination with effect from 31-10-1977 was also admitted. The only question was as to whether there is delay in making the application. I do not think this is a circumstance which resulted in the matter being remitted back. It is not in dispute that the requirement of the I.D. Act has not been complied with before the termination was effected. If that is so, the termination has to be set aside. The consequential relief would be to reinstate the worker with backwages. The Labour Court has exercised its discretion in declining the backwages from the date of termination till the worker made the application under Section 10(4-A) of the I.D. Act.

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I.D. Act. Therefore, it is a valid exercise as well. The other contention of the learned counsel for the petitioner was that the Karnataka Urban Water Supply and Drainage Board is not an industry. That contention can no more be contended after the decision of the Supreme Court on that issue.

3. The last contention urged by Sri. Sanjay Gowda is regarding the award of backwages. I feel there is some force in this contention. It is not shown that the worker was unemployed. It is also not shown that the worker was not gainfully employed. The nature of duty and work that of a Watchman can be discharged at any time. Such a person would be able to gain employment anywhere at any time. If that is the position, there is no justification for the Labour Court to award 50% backwages from the date of application till the date of award. Taking into account all circumstances, I compute 25 per cent of the backwages from the date of application till the date of award.



award. The backwages shall be paid within 8 weeks from today as agreed to by the learned counsel for the petitioner. The writ petition is disposed of as above.

Sd/-  
JUDGE



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